



A.S.NO.276 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2025

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CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.276 OF 2017

AND

CMP NO.10501 OF 2017

1.Muniappan	... Appellant / 1 st Defendant
2.Pushparadha	... Appellant / 3 rd Defendant

Vs.

Jayammal	... Respondent / Plaintiff
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PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated September 19, 2016 passed in O.S.No.191 of 2010 by the II Additional District Judge, Salem.

For Appellants : Mr.V.Sekar

For Respondent : Mr.P.Chandrasekar

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated



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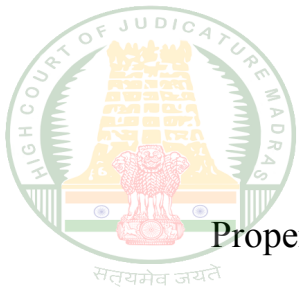
September 19, 2016 passed in O.S.No.191 of 2010 by the 'II Additional District Court, Salem' ['Trial Court' for brevity], the defendants 1 and 3 therein have filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Properties originally belonged to Nattaraya. Second defendant is the wife, first defendant is the son and plaintiff is the daughter of Nattaraya.

3.1. Suit 'A' Schedule Property was purchased by Nattaraya by virtue of Sale Deed dated December 12, 1955. Suit 'B' Schedule Property was purchased by Nattaraya by virtue of Sale Deed dated January 27, 1961. He was in possession and enjoyment of both the Suit Properties till his demise on August 15, 2000. After his demise, the plaintiff and the defendants 1 and 2 are entitled to 1/3 share in Suit Properties each and are in joint possession and enjoyment of the Suit



Properties.

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3.2. The plaintiff demanded partition and separate possession of her 1/3 share and issued legal notice on April 22, 2010 to the first defendant demanding partition. The first defendant sent a reply notice on May 25, 2010 alleging that Nattaraya executed an unregistered Will on September 21, 1998 in favour of the first defendant. Since the first defendant refused to agree for partition, the plaintiff filed the present Suit seeking partition of Suit Properties into three equal shares and allot one such separated share to the plaintiff.

3.3. Pending Suit, the second defendant passed away intestate on October 25, 2015, leaving behind the plaintiff and the first defendant as her legal heirs to succeed her estate. Hence, the plaintiff and the first defendant are entitled to ½ share each in the Suit Properties.

DEFENDANTS' CASE

4. The first defendant filed written statement denying the allegations made by the plaintiff in the plaint and the same was adopted by the third defendant who is the wife of the first defendant. The



relationship between the plaintiff and defendants is admitted. It is averred

that Nattaraya, during his lifetime, executed a Will dated September 21, 1998 in the presence of a witness and a notary advocate. In the Will it has been described that the marriage of the plaintiff took place before 32 years and 25 sovereigns of Gold Jewels along with *Seervarisai* were gifted for her marriage. After the demise of Nattaraya, the Will came into force and thereby the first defendant became the absolute owner of the Suit Properties. Revenue records were mutated in the name of first defendant and he had been in possession and enjoyment of the Suit Properties and also paying kist.

4.1. Then the first defendant executed a Settlement Deed dated June 9, 2010 in favour of the third defendant and since then, she is in possession and enjoyment of the Suit Properties. As per the Settlement Deed, patta was mutated in the name of the third defendant. In view of 'the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005)' (henceforth '2005 H.S. Amendment Act'), the plaintiff ought to have sought for partition immediately after the father's demise but she failed to do and hence, she is not entitled to partition of Suit Properties. Further, any alienation or disposition before the commencement of the 2005 H.S.



Amendment Act, is saved by the 2005 H.S. Amendment Act. The Will

came into effect on August 15, 2000 and acted upon and hence, the

plaintiff is not entitled to any share in the Suit Properties. The Court-fee

paid under Section 37 (2) of the 'Tamil Nadu Court-Fee and Suits

Valuation Act, 1955' ['T.N.C.F. Act' for short] by the plaintiff is incorrect.

The Suit as such is not maintainable without seeking the relief of

declaration of title. Stating so, the defendants prayed to dismiss the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- '(i) Whether the plaintiff is entitled to 1/3 share in the Suit Properties?*
- (ii) Whether Nattaraya executed a Will dated September 21, 1998 in favour of the first defendant in respect of the Suit Properties?*
- (iii) Whether the plaintiff is entitled to partition of the Suit Properties?*
- (iv) To what other relief?'*



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6. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.6 were marked. On the side of the defendants, first defendant was examined as D.W.1 and one Palanisamy was examined as D.W.2 and Ex-B.1 to Ex-B.8 were marked.

7. After full-fledged trial, the Trial Court held that the Suit Properties are separate properties of Nattaraya. Further held that Ex-B.5 – Will is false and fabricated. The plaintiff and the first defendant are co-heirs / co-owners entitled to equal share in the Suit Properties. The plaintiff is deemed to be in joint possession and enjoyment of the Suit Properties. Hence, the Court Fee paid under Section 37 (2) of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955 is correct. Accordingly, it decreed the Suit by declaring that the plaintiff has $\frac{1}{2}$ share in the Suit Properties and passed a Preliminary Decree for partition.

8. Feeling aggrieved, the defendants 1 and 3 have preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.



ARGUMENTS

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9. Mr.V.Sekar, learned counsel for the appellants / defendants

1 and 3 would argue that an extent of 2 Acre 91 ½ Cents in Survey No.7/2 was allotted to Nattaraya under Ex-A.1 - Partition Deed dated March 20, 1950. The properties so allotted are joint family properties. Thereafter, Nattaraya sold the allotted properties to one Sengodan. In and out of the sale proceed, he purchased Suit 'A' and 'B' Schedule Properties. Hence, the Suit Properties are ancestral and joint family properties in the hands of Nattaraya. The plaintiff was given in marriage before the commencement of Tamil Nadu Act No.1 of 1990. At the time of her marriage, 25 sovereigns of gold and some *Seervarisai* were gifted to her. Nattaraya during his lifetime bequeathed the Suit Properties through Ex-B.5 - Unregistered Will in favour of first defendant. Ex-B.5 – Will came into force upon Nattaraya's demise on August 15, 2000, disposition took place and the first defendant became the absolute owner of the Suit Properties. The Trial Court erred in concluding that Ex-B.5 - Will was not proved by observing that only one attesting witness was examined. The Trial Court failed to consider the fact that one Kuppuraj, Advocate Notary Public signed the Will as an attestor, besides one A.Palanisamy. The defendants



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could not examine the said Kuppuraj as he was no more, but they examined the said A.Palanisamy as D.W.2 in order to prove Ex-B.5 – Will. The evidence of D.W.2 proves the execution of Ex-B.5 – Will as per Section 63 of the Indian Succession Act, 1925 read with Section 68 of Indian Evidence Act, 1872. Since Ex-B.5 – Will came into force before December 20, 2004, and the testamentary succession took place immediately upon the demise of the testator – Nattaraya *i.e.*, on August 15, 2000. Hence, the testamentary disposition under Ex-B.5 has been saved under the proviso to Section 6 (1) of the Hindu Succession Act, 1956. Therefore, the plaintiff is not entitled to claim partition in the Suit Properties. Further, he would emphasize that the plaintiff who left the joint family upon her marriage after receiving gold and *Seervarisai* long ago, cannot claim any share in the Suit Properties. Accordingly, he prays to allow the appeal.

10. Per contra, Mr.P.Chandrasekar, learned Counsel for the respondent / plaintiff argues that the Suit Properties were purchased by Nattaraya under Ex-A.3 and Ex-A.4 – Sale Deeds dated December 12, 1955 and January 27, 1961 respectively. Further submits that Nattaraya's interest in the joint family properties were sold to one Sengoda Gounder

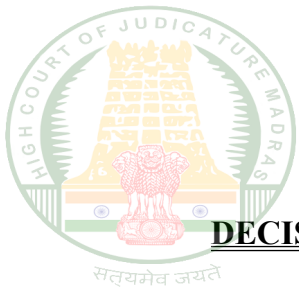


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in the year 1952 under Ex-B.8 Sale deed *i.e.*, prior to Ex-A.3 and Ex-A.4.

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There is no nexus between the sale of joint family properties and the purchase of Suit Properties. Hence, the Suit Properties are self-acquired properties of Nattaraya. Nattaraya passed away intestate in the year 2000 and his wife - Marakkal @ Sinthamani Ammal passed away on December 25, 2015. Hence, as per Sections 8 and 15 of the Hindu Succession Act, 1956, the plaintiff is entitled to $\frac{1}{2}$ in the Suit Properties. Further, he argues that Nattaraya did not execute Ex-B.5 – Will at all. Ex-B.5 – Will was falsely created with the aid of D.W.2 who is none other than the brother-in-law of first defendant. The alleged signature of Kuppuraj, Notary Advocate has also been forged. In view of the specific denial of execution of Ex-B.5 – Will and the contention of the plaintiff that Ex-B.5 was fraudulently created by forging the signature of Kuppuraj, the defendants ought to have proved alleged Kuppuraj's signature as per Section 69 of Indian Evidence Act, 1872. But they failed to do so. Hence, the Trial Court was right in its finding that the defendant failed to prove Ex-B.5 – Will as per law. Therefore, the Judgment and Decree of the Trial Court warrants no interference Accordingly, he prays to dismiss the Appeal Suit.



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DECISION:

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11. Heard on either side. Perused the entire evidence available on record. The following points arise for consideration in this Appeal Suit:

- (i) Whether the Suit Properties are self-acquired of Nattaraya or his ancestral properties?
- (ii) Whether Ex-B.5 - Will dated 21.09.1998 is valid and proved as per law?
- (iii) Whether the Judgement and decree of the Trial Court is to be interfered with?

Point No.(i):

12. Originally, an extent of 5 Acre 83 Cents in Survey No.7/2 and common 1/3 share in 6 Acre 17 Cents in Survey No.4 were owned by Perumal Gounder. The said Perumal Gounder had two wives. Through the first wife - Periammal, Kali Gounder and Nattaraya (father of plaintiff and first defendant) were born. Through the second wife – Palaniammal, Chinnana Gounder was born. Perumal Gounder died around 1938. After Perumal Gounder's demise, on November 29, 1941, the three sons of Perumal Gounder namely Kali Gounder, Nattaraya and Chinnana Gounder, entered into registered partition partitioning the aforesaid



properties allotting 1/3 share each under Ex-B.6 – Partition Deed.

Thereafter, on March 20, 1950, under Ex-A.1 – Partition Deed, Kali Gounder's son – Madhaiyan and Nattaraya, both of whom were minors then and represented by their respective guardians, partitioned the said 5 Acre 83 Cents in Survey No.7/2 equally. There is some transaction in between Ex-B.6 and Ex-A.1 – Partition Deeds, which cannot be deduced from the evidence available on record. Probably Kali Gounder's minor son along with Nattaraya jointly acquired Chinnana Gounder's 1/3 share in the aforesaid extent of 5 Acre 83 Cents. Thereafter, vide Ex-B.7 – Sale Deed dated December 7, 1951, Kali Gounder's wife – Perumayammal sold an extent of 2 Acre 91 ½ Cents allotted in favour of her minor son under Ex-A.1 – Partition Deed, to one Rama Gounder. Thereafter, on August 11, 1952, Nattaraya, his wife – Marakkal, said Rama Gounder and three others, sold an extent of 3 Acre 33 Cents for Rs.2,000/- in favour of Sengoda Gounder under Ex-B.8 – Sale Deed. From the perusal of Ex-B.8 – Sale Deed, it can be seen that on the even date *i.e.*, August 11, 1952, the portion on the southern side of the property sold under Ex-B.8, was sold to one Kuttyammal. From the above, one thing is clear that the entire extent in Survey No.7/2 had been sold. The fact that the entire extent in

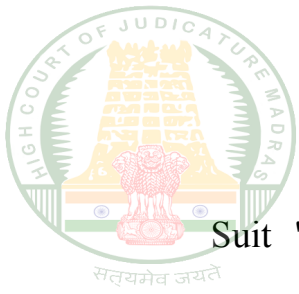


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Survey No.7/2 had been sold is also admitted by both sides. As regards the said common 1/3 share in 6 Acre 17 Cents in Survey No.4, there is no evidence available on record to show that Nattaraya left the said property for his legal heirs. The defendants' case is also silent about the said common 1/3 share in Survey No.4. From a cumulative consideration of the above facts along with the fact that the plaintiff did not seek partition in respect of the said common 1/3 share in Survey No.4, it can be discerned that the said property has been disposed of.

13. Thereafter, on May 12, 1955, Nattaraya purchased an extent of 1 Acre 66 ½ Cents vide Ex-A.3 – Sale Deed for Rs.1,000/- from Sengoda Gounder and the same constitutes the Suit 'A' Schedule Property. Similarly, on January 27, 1961, vide Ex-A.4 – Sale Deed, Nattaraya purchased Suit 'B' Schedule Property from Sengoda Gounder for Rs.2,500/-.

14. In short, entire extent of the joint family properties had been sold and later Suit 'A' and 'B' Schedule Properties had been purchased by Nattaraya vide Ex-A.3 and Ex-B.4. The burden to establish a nexus between the sale of joint family properties and the purchase of



Suit 'A' and 'B' Schedule Properties is upon the defendants. The defendants have to establish that the Suit Properties were purchased using the sale proceeds from the sale of joint family properties or using the income from joint family properties. The defendants have failed to establish such a nexus. Hence, this Court is of the view that the Suit Properties are self-acquired properties of Nattaraya vide Ex-A.3 and Ex-A.4. The Trial Court is also of the same view. Hence, the decision of the Trial Court warrants no interference. **Accordingly, Point No.(i) is answered in favour of the plaintiff and against the defendants.**

Point No.(ii):

15. As far as the proof of Will is concerned, it is apposite to refer to the Judgment of Hon'ble Supreme Court in *H.Venkatachala Iyengar -vs- B.N.Thimmajamma*, reported in *AIR 1959 SC 443* which is regarded as the *locus classicus* for proof of Will. Relevant extract is hereunder:

"18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise



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making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give



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effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed



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testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of



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relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the



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will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive. "

16. Now this Court shall apply the legal principles advanced in ***H.Venkatachala Iyengar's Case*** to the case on hand.

17. Admittedly the testator – Nattaraya was 80 years old at the time of alleged execution of Ex-B.5 – Will dated September 21, 1998. Ex-B.5 – Will is an unregistered one. Ex-B.5 is written in two papers; one of them is a Ten Rupees Stamp Paper while other is a ordinary paper. The

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said Stamp Paper was purchased in the name of first defendant on September 1, 1998 from a stamp vendor in Erode, while the parties and witnesses are from Salem and Ex-B.5 was allegedly executed in Salem. From the fact that the Stamp Paper was purchased by the first defendant, it can be understood that he had participated in the preparation of the Will.

18. There was only one “witness” to Ex-B.5 – Will, namely A.Palanisamy who is none other than the brother-in-law of first defendant. In addition to A. Palanisamy signing as a “witness”, one Kupuraj, Advocate and Notary Public has signed as an “attestor”. The plaintiff would contend that as per Section 63 of Indian Succession Act, 1925, a Will is a compulsorily attestable document which must be attested by two or more witnesses. In other words, the plaintiff would contend that attestation of the Notary Advocate, does not count as an attestation by a witness. The said contention deserves to be rejected. A Notary Advocate who has attested a document is also counted as an attesting witness. Hence, the requirement of attestation by two or more witnesses under Section 63 of Indian Succession Act, 1925 has been fulfilled. Be that as it may, the defendants have examined the said A.Palanisamy as D.W.2, but



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he being first defendant's brother-in-law is an interested witness. In these circumstances, the defendants ought to have examined the other attesor, the said Kuppuraj. The defendants contend that the said Kuppuraj could not be examined as he had expired before trial.

19. As per Rule 11 of the Notaries Rules, 1956, every Notary shall maintain a notarial register in the prescribed Form XV. As per Rule 9 thereof, every Notary shall grant a receipt for the fees and charge realised by him and shall also maintain a register reflecting the same. As per Rule 12 thereof, every notary shall use plain circular seal of diameter of 5 cm containing registration number and name of the government which appointed him. Further, as per Serial No.42 under Schedule 1 of the Indian Stamp Act, 1899, any notary attestation shall have stamp of appropriate value affixed. In this case, there is no evidence available on record to even suggest the above aspects. From the perusal of Ex-B.5, it can be seen that no Notary stamp or seal as prescribed is affixed in Ex-B.5, nor there is any particulars about Notary register entry. The defendants did not take steps to call for the Notary register. This makes the alleged Kuppuraj's signature a highly doubtful one.



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20. The plaintiff's side put a specific suggestion to D.W.1 / first defendant and D.W.2, that the said Kuppuraj passed away long ago and his name is misused in the locality to create false documents. D.W.1 and D.W.2 have denied the said suggestion. When D.W.2 is an interested witness and when the plaintiff takes a specific stand that the signature of the said Kuppuraj is a forged one, the defendants ought to have taken steps to prove that the alleged signature found in Ex-B.5 – Will is that of the said Kuppuraj as per Section 69 of Indian Evidence Act, 1872. But they failed to do so. The aforesaid facts raise suspicion around Ex-B.5 – Will.

21. The propounder of a Will bears the duty to prove that the testator executed the Will voluntarily in a free, sound and disposing state of mind. The first defendant being the beneficiary of Ex-B.5 – Will has to prove Ex-B.5 by removing the surrounding suspicious circumstances. The defendants did not satisfactorily dispel the clouds surrounding Ex-B.5. In these circumstances, this Court is of the view that the defendants failed to prove Ex-B.5 - Will. The Trial Court had rightly concluded that the Will was not proved and there is no need to interfere with the said finding. **Accordingly, Point No.(ii) is answered in favour of the plaintiff and**



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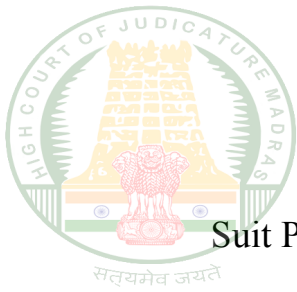
against the defendants.

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Point No.(iii) :

22. As stated *supra*, the Suit Properties are self-acquired and separate properties of Nattaraya, who died intestate in 2000 (Ex-B.2 – Death Certificate) leaving behind the plaintiff / daughter, first defendant / son and second defendant / wife as his legal heirs. Hence each of them are entitled to 1/3 share in the Suit Properties under Section 8 of the Hindu Succession Act, 1956. Upon the demise of Nattaraya's wife in 2015, her 1/3 share would devolve upon the plaintiff and the first defendant under Section 15 of the Hindu Succession Act, 1956. Thus, the plaintiff and the first defendant would be entitled to ½ share in the Suit Properties.

23. Nattaraya passed away on August 15, 2000. Even while assuming that the Suit Properties are joint family properties, as discussed under Point No.(ii), Ex-B.5 – Will has not been proved, and there is no evidence of any alienation, disposition or partition before December 20, 2004. Hence, the Suit Properties are not saved under the proviso to Section 6 (1) of the Hindu Succession Act, 1956 as amended by 2005 H.S. Amendment Act. Hence, plaintiff would still be entitled to ½ share in the



Suit Properties after the demise of her father and mother.

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24. The plaintiff and defendants are co-heirs / co-owners of the Suit Properties. The defendants raised a plea in their written statement that the plaintiff had been ousted from the Suit Properties, when father - Nattaraya died in the year 2000 and mother died in the year 2015. Though Nattaraya passed away in the year 2000, the Suit has been filed in the year 2010 *i.e.*, well within a period of twelve years. There is no evidence available on record to prove ouster. Even while assuming that the plaintiff was not in actual possession and enjoyment of the Suit Properties, possession of one co-owner is deemed to be possession of other co-owners as well. Hence, the Court Fee paid under Sections 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is correct [See *Neelavathi -vs- N.Natarajan*, reported in *AIR 1980 SC 691*].

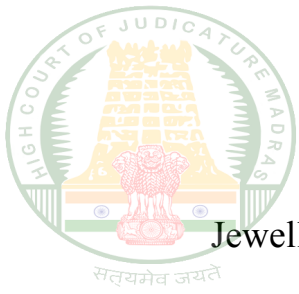
25. Ex-A.5 – Suit Notice is dated April 22, 2010. Reply Notice is dated May 25, 2010. Suit is filed on September 6, 2010. Ex-B.3 - Settlement Deed was executed on June 9, 2010. Ex-B.3 – Settlement Deed has been executed by first defendant in favour of his wife / third defendant shortly after Ex-A.5 - Suit Notice. It can be easily discerned



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Ex-B.3 was executed with a view to defeat and defraud the rights of the plaintiff over the Suit Properties. As stated *supra*, the plaintiff is entitled to ½ share in the Suit Properties. Ex-B.3 will not bind the plaintiff's ½ share. She can simply ignore the same and there is no need to seek the relief of declaration that Ex-B.3 is invalid. Further, Ex-B.1 - Patta standing in the name of defendants 1 and 3 was obtained on December 6, 2014 *i.e.*, during the pendency of the Suit. Ex-B.4 - Kist receipt is also obtained after the Suit. Hence, Ex-B.1 and Ex-B.4 does not come to the aid of the defendants and will not affect the plaintiff's ½ share in the Suit Properties.

26. The learned Counsel would vehemently contend that the plaintiff was given grand *Seervarisais* and Gold Jewelleries at the time of her marriage in or around 1968 and upon her marriage, the plaintiff left the joint family. In such a Scenario, after these many years, the plaintiff cannot claim any share in the Suit Properties. This Court is unable to accept the said contention. As elaborated above, the Suit Properties are self-acquired and separate properties of Nattaraya. Succession opened only in the year 2000 upon Nattaraya's demise. There is no proof for any extensive spending on marriage, Seers and Gifts in the form of Golden



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Jewellery. Even if it had been so, it would not in any manner affect or extinguish the rights of the plaintiff over the Suit Properties.

27. In view of the foregoing narrative, this Court finds no reason to interfere with the Judgment and Decree of the Trial Court. The Judgment and Decree of the Trial Court warrants no interference. Hence, the Appeal Suit must fail. **Accordingly, Point No.(iii) is answered in favour of the plaintiff and against the defendants.**

RESULT:

28. In the result, the Appeal Suit is dismissed and the Judgment and Decree dated September 19, 2016 passed in O.S.No.191 of 2010 by the learned II Additional District Court, Salem is hereby confirmed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

17.07.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes

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To

The II Additional District Judge
Salem.



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R. SAKTHIVEL, J.

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